RECENT DECISIONS

CARRIERS—"DROVER'S" PASSES—INTERPRETATION OF FEDERAL STATUTE.—The plaintiff, in charge of an interstate shipment of stock, was travelling on a freight train upon a free pass, issued in accordance with the terms of the contract of shipment as permitted by Federal statute (34 Stat. at L. 584, Chap. 3591, Comp. Stat. 1916 par. 8363), which excepts necessary caretakers of live stock from the prohibition against the issuance of any "interstate free pass." The plaintiff had signed a contract purporting to release the carrier from all liability for any personal injury which he might sustain by reason of the carrier's negligence. The plaintiff was injured by carrier's negligence. *Held,* the plaintiff was a passenger for hire, and could recover. *Norfolk-Southern R. Co.* v. *Chatman,* 37 Sup. Ct. 499.

In England the validity of a stipulation in a free pass exempting the carrier from liability from negligence is well established. *McCawley* v. *The Furness R. Co.,* L. R. 8 Q. B. 57; *Gallin* v. *London R. Co.,* L. R. 8 Q. B. 212; *Hall* v. *The Northeastern R. Co.,* L. R. 10 Q. B. 437. In the United States there is some conflict but the great weight of authority upholds such stipulation. *Rogers* v. *Kennebec Steamboat Co.,* 86 Me. 261, 29 Atl. 1069, 25 L. R. A. 491; *Perkins* v. *New York, etc., R. Co.,* 24 N. Y. 196, 82 Am. Dec. 282; *Mitten* v. *Delano* (Ind.), 116 N. W. 774. The validity of such stipulation has been upheld where the passenger did not read the stipulation or was not aware of its contents. The decision in such case is placed on the ground that one enjoying a license is bound to acquaint himself with the terms under which he receives it, and is estopped to deny the terms thereof. *Boering* v. *Chesapeake Beach R. Co.,* 193 U. S. 442; *Rogers* v. *Kennebec Steamboat Co., supra.*

Likewise an employee has been allowed to recover on the theory that his pass was a part of the consideration for his work. *Dugan* v. *Blue Hill St. Ry. Co.,* 193 Mass. 431, 79 N. E. 748. But where a messenger, employed by an express company, was injured by the negligence of a railroad company, he was denied recovery because the relation between the carrier and express company was the result of special contract and not that of carrier and shipper. *Baltimore & O. R. Co.* v. *Voigt,* 176 U. S. 498; *Perry* v. *Philadelphia, etc., R. Co.,* 24 Del. 399, 77 Atl. 725.

The question of the validity of such stipulation, contained in a cattle drover's pass, presents opposing decisions in the various state courts. In New York it is settled that there can be no recovery in such case. *Bissel* v. *New York, etc., R. Co.,* 25 N. Y. 442, 82 Am. Dec. 369. And this is also the rule in England. *Gallin* v. *London R. Co., supra.* But the weight of authority in this country seems to be *contra.* The majority decision in this country is based on the reasoning that the consideration paid for the shipment of stock is inclusive of the pass and hence the pass is not gratuitous. *Blatcher* v. *Philadelphia, etc., Co.,* 31 App. D. C.

385, 16 L. R. A. (N. S.) 991; *Buckley* v. *Bangor, etc., R. Co.*, 113 Me. 164, 93 Atl. 65, L. R. A. 1916A, 617.

The decision in the instant case is based on the reasoning that the designation "free pass" as applied to transportation issued or given by the railroad companies to shippers and carriers of stock had acquired a definite and well known meaning, sanctioned by decisions of the courts, prior to the enactment of the statute of June 29, 1906. That is, that such transportation is not "free" in the popular sense, but transportation for hire with all the legal incidents of paid transportation, therefore Congress must be presumed to have used the designation in the latter sense in the act in question.

In some states in regard to intrastate shipments it is provided by statute that no agreement by a common carrier for exemption from liability for injury caused by its own negligence or misconduct, shall be valid, and an agreement with a passenger travelling on a free pass, relieving the carrier from the consequences of its own negligence or that of its servants, is invalid. Va. Code, § 1296; *Norfolk, etc., R. Co.* v. *Tanner*, 100 Va. 379, 41 S. E. 721. See DOBIE, BAILM. & CAR. 614.

CARRIERS—DUTY TO PASSENGERS—APPROACHES TO TRAINS.—A crowd of excursionists were waiting along a railroad track where they were to board a train. In the rush for the car, the plaintiff's husband was pushed against a moving train and fatally injured. The company had taken no steps to prevent a rush of the crowd in entering the car. The only approach to the train was a cinder path poorly lighted. *Held*, the plaintiff can recover. *Coyle* v. *Phila. & Reading Ry. Co.* (Pa.), 100 Atl. 1005.

A person who has presented himself at the proper place intending to board a train when it arrives, is a passenger and a carrier owes him a duty to provide suitable and safe accommodations and convenient ways of access to trains. *Jordon* v. *New York, etc., R. Co.*, 165 Mass. 346, 32 L. R. A. 101; *Warren* v. *Felchburg Ry. Co.*, 8 Allen (Mass.) 227, 85 Am. Dec. 700. Thus it must keep its platforms and approaches lighted sufficiently to afford its passengers safe passage to and from trains. *Louisville, etc., R. Co.* v. *Treadway*, 142 Ind. 491, 40 N. E. 807.

There are two views as to the amount of care required of a carrier in providing for the accommodation of intending passengers. One line of cases holds that the carrier is bound to use the highest degree of practicable care. Thus where on many previous occasions large crowds have assembled at a station accompanied by a struggle to get on the car, the carrier must anticipate a recurrence and take extra precautions to prevent accidents. *Kuhlen* v. *Boston, etc., Ry. Co.*, 193 Mass. 341, 79 N. E. 815. But the carrier is not liable for injuries resulting from a strike riot which resulted without warning. *Nute* v. *Boston & M. Ry. Co.*, 214 Mass. 184, 100 N. E. 1099.

By the other view, the carrier is liable only for a failure to exercise such care as an ordinary prudent business man would exercise under the same circumstances. *McCormick* v. *Detroit, etc., R. Co.*, 141 Mich. 17, 104 N. W. 390; *Kirby* v. *Delaware, etc., R. Co.*, 46 N. Y. Supp. 777. So the character and extent of the lighting must depend upon the character and extent of the business at any particular station. *Sargent* v. *St. Louis,*